IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 5865 OF 2005

Ordinance Factory's Employees Education Society, Khadki.... Petitioner

versus

Mrs. Ashwini Uday Rane & Ors..... Respondent.

ALONGWITH

WRIT PETITION NO. 5866 OF 2005

Ordinance Factory's Employees Education Society, Khadki.... Petitioner

versus

Mrs. Vandana P. Chawandke ... Respondent

Mr. S.V.Pitre with Rakeshkumar Saroj for the petitioner
Mr. A.M. Joshi for respondent no.1.
Mr. V.S.Mhaispurkar AGP for Respondents 2 and 3.

CORAM; A.P. DESHPANDE, J.
DATED; 28TH EBRUARY, 2007

JUDGMENT;

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. The petitioner society administers a secondary school to which classes of XI and XII were attached. Junior college comprising of Standard XI and XII fall within the definition of private school and the service conditions of employees working therein are

governed by MEPS Act and the Rules made thereunder.

3. Respondent no.1 in both the writ petitions were working as part time Assistant teachers (lecturer in junior college). Their services were terminated and on account of termination of service the respondent no.1 in both the petitions, had filed appeals before the School Tribunal. The petitioner management had contended before the tribunal that the employees were temporary employees and the termination of their services is legal and proper. Rejecting the case of the management, the tribunal held that both the respondent no.1 herein were working as part time lecturers/Assistant teachers imparting education in junior college and their termination is not in conformity with the provisions of law. Accepting the case of the respondent no.1 herein, tribunal has allowed the appeal and granted relief of reinstatement with back wages. The reinstatement as part time teacher, in compliance of the orders passed by the tribunal, is granted by the present petitioners to respondent no.1 and they have also made certain payments towards backwages, is an admitted position. On one hand, the petitioner has complied with the order passed by the tribunal and on the otherhand challenges the correctness of the order by filing the present writ petition. Subsequent event has taken place during the pendency of the writ petition which

nececitates modification of the order passed by the tribunal. The subsequent event after reinstatement of the respdt. no.1 is that in academic session 2004-2005 the petitioner has chosen to close down part of the school viz. the junior college classes comprising of standard XI and XII and on account of such a closure there is need to modify the order passed by the tribunal is a joint submission made by the learned counsel appearing for the parties. The learned counsel for the petitioner submits that the matter is squarely covered by Rule 25-A whereas the learned counsel for respondent no.1 submits that appropriate direction may be issued under Rule 26 of the Rules meaning thereby the respondent no.1 be directed to be absorbed in some other school and till the absorption is granted, they need to be paid salary regularly. Obviously on account of closure of junior college, it is not possible to continue the respondent no.1 in service even as a part timer. The situation like the one, which is reflected in these petitions is squarely covered by the provisions of Rule 25-A of MEPS Rules. It lays down that if the school or part of a school is closed down voluntarily by the management, the names of the permanent employees working therein need to be taken on the waiting list maintained by the Dy. Director of Education for recommending the names by him to the management of newly opened aided school or of the existing aided

schools which are allotted additional classes or division,for consideration. On closure of a school Rule 26 has no application and the only right of an employee is the one carved out by Rule 25-A.

4. I have no doubt that an employee covered by Rule 25-A has no better right than what is extended by sub Rule 2 of Rule 25-A and thus the respondent no.1 will not be entitled to absorption, so also regular salary till his absorbtion.

5. In the result, the writ petitions are partly allowed. In view of the closure of the school from the academic year 2004-2005, I direct the Dy. Director of Education to include the name of respondent no.1 in both the writ petitions in a waiting list to be maintained under Rule 25-A of MEPS Rules and recommend names of respondent no.1 to the management of some other aided school as required by Rule 25-A. Rule made absolute in above terms. No order as to costs.

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